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C O N F I D E N T I A L SECTION 01 OF 03 COLOMBO 001942

SIPDIS

DEPARTMENT FOR SA, SA/INS

NSC FOR E. MILLARD

LONDON FOR POL/RIEDEL

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SUBJECT: GSL plan to rein in executive powers in disarray; Election, impeachment options under review

Refs: (A) FBIS Reston Va DTG 170638Z Oct 02

- (B) Colombo 1920, and previous

(U) Classified by W. Lewis Amselem, Deputy Chief of Mission. Reasons 1.5 (b, d).

SUMMARY

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1. (C) The GSL's proposed constitutional amendment reining in executive powers has run into a major roadblock. While not officially announced, the Supreme Court has reportedly decided that one part of the proposal is unconstitutional and the other subject to a referendum. This apparent decision comes amid reports that the GSL might not have the support needed in Parliament to pass the amendment in any case. With its plans in disarray, the government is mulling over the idea of calling a new election or maybe going for impeachment of the president. The smoke has not yet cleared, but it is still possible that all the confusion could lead to better cohabitation ties, not worse. END SUMMARY.

Reported Legal Trouble for GSL Proposal

2. (SBU) The government's proposed constitutional amendment reining in the president's powers has run into a major roadblock. Our soundings confirm October 17 press reports that the Supreme Court has apparently decided the following (although it has not yet been officially announced):

-- In addition to needing two-thirds support in Parliament, the part of the proposed amendment that would rein in the power of the president to call an election one year after the last election requires a national referendum. The effective transfer of the power to call an election from the president to the Parliament per the proposal is so "fundamental" that the issue has to be put to a popular vote. The court left the door open for the GSL to rewrite this part of the proposed amendment in some way that better protected executive prerogatives. (Note: The last parliamentary election was held in December 2001. The government pushed ahead on this effort to rein in President Kumaratunga's powers out of fear that she would call a new election in December 2002, her first opportunity to do so.)

-- As for the other key section, the court reportedly ruled that the proposal to allow crossover voting in Parliament is basically unconstitutional. In doing this, the court apparently determined that the power of party whips to control MPs was a right protected by the constitution. (Note: The GSL wanted this provision in place as a way to protect members of other parties who decided to support the proposed amendment. Without such protection, members who vote against their party's announced position can be tossed out of Parliament after legal maneuvering.)

(Note: It is not clear when the Supreme Court's official decision will be announced, but it is expected soon.)

Government Lacking Support In Any Case?

3. (C) The Supreme Court's apparent decision comes amid reports that the GSL might not have the requisite two-thirds support needed in Parliament to pass the proposed amendment to begin with. With a vote supposed to take place in the next several weeks, the government does not seem to have rallied enough support from other parties to win. In fact, the government's campaign for the

proposed amendment seems to be running out of steam as a possible vote draws nearer.

14. (C) Breaking down the numbers, Jehan Perera, the director of a well-known think-tank, told us that the government can only count on about 130 of the 150 MPs it needs in the 225-member Parliament. The governing United National Party (UNP) is having trouble luring members of President Kumaratunga's People's Alliance (PA) party to its side, despite its initial success in siphoning off a handful of PA MPs. In addition, he related, the UNP is even having trouble holding onto members of its own coalition, such as MPs from the Sri Lanka Muslim Congress (SLMC). (Note: Several SLMC MPs are clearly frustrated with the GSL over the peace process, especially the involvement of SLMC leader Rauf Hakeem in the peace effort, and are playing hard to get.) In a sign of its success on the peace process front, however, the UNP can count on the support of the 16 MPs of the Tamil National Alliance (TNA), Perera noted.

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Mulling Over Other Options

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15. (C) A New Election?: With its plans for the proposed amendment in real disarray, the GSL is reportedly mulling over the idea of calling a new election or maybe going for impeachment. Milinda Moragoda, a key minister and close adviser to the prime minister, told us that he tentatively favored the idea of calling a new election. In his estimation, given the popularity of the peace process, the UNP could count on picking up a good number of seats if an election is held soon. Simultaneously, the PA could expect to lose quite a few seats, while the UNP's ally, the TNA, picked up seats. He elaborated on two crucial problems with this option. First, most UNP MPs were not very enthusiastic about entering into what could be an unpredictable election process. Second, it was not clear constitutionally whether the PM and the governing coalition could call election on their own volition or whether they needed the approval of the president. (Note: Although there is plenty of ambiguity, a reading of the constitution tends to indicate that only the president has the power to call an election and Kumaratunga has indicated that she has no plans to do so -- See more on this issue below in para seven.) (Note: Ref A FBIS report indicates that the cabinet has formally decided to go for a new election. Best that we can figure, the report is not accurate.)

16. (C) Inpeaching the President?: Another option involves the impeachment route. Moragoda noted that there are a number of UNP MPs who want to move forward with a long-standing plan to impeach Kumaratunga on abuse of power and other charges. The supporters of this course are vocal and influential in the UNP. Moragoda remarked, however, that they do not have the ear of the PM, who is reluctant to go down this track because it would lead to distractions that would probably get in the way of GSL initiatives, including the peace process.

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Presidential Assistant's Reaction

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17. (C) The president's office clearly is not unhappy over the government's conundrum on what to do. In a meeting with PAO and polchief, Harim Peiris, a presidential media adviser, appeared quite satisfied regarding what he had heard about the Supreme Court's apparent decision. He remarked that the court was only taking the position that the president's office had held since the proposal was first made. Asked about possible next steps by the government, Peiris speculated that it probably would not go for impeachment, which was too messy. As for a new election, Peiris was clear that he thought that only the president had the ultimate power to make that decision and she had publicly stated that she had no intention of doing so. It was also possible, Peiris allowed, that the government might rewrite its proposed amendment, framing it to pass the court's muster. All in all, Peiris thought that cohabitation would muddle along, with no great shifts. He stressed that the cohabitation situation would be greatly improved if Prime Minister Wickremesinghe would order all members of his cabinet to quit what Peiris termed "harsh attacks" on the president, who only wanted to be "treated like a lady."

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COMMENT

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18. (C) The smoke has not yet cleared on this situation. Indeed, although there clearly has been a leak, the Supreme Court's decision has not yet been formally announced and it is possible that initial reports on its contents may be inaccurate. All that said, it does seem that the government has suffered a setback in its efforts to marginalize the president. President Kumaratunga has played a weak hand very well and seems to have put the government on the defensive for the moment. It is possible that this will unnerve the GSL and make it press harder against her, perhaps by precipitating a potential constitutional crisis over who has the power to call a new election. At the same time, it is possible that the government may take the opposite tack and decide to try harder to work with her. In fact, the GSL may be leaning in this direction already per its recent decision to engage the president in "joint" meetings on peace process and national security issues (see Reftels). If the government chooses this latter option and does not to hit the panic button, the present convoluted situation might lead to improved cohabitation ties, not worse. END COMMENT.

19. (U) Minimize considered.

WILLS